

Message Text

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PAGE 01 KHARTO 00602 201211 Z

46

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FM AMEMBASSY KHARTOUM

TO SECSTATE WASHDC 6273

USIA WASHDC

AMEMBASSY AMMAN

AMEMBASSY BEIRUT

AMEMBASSY JIDDA

AMEMBASSY TRIPOLI

USINT ALGIERS

USINT CAIRO

C O N F I D E N T I A L KHARTOUM 0602

JOINT STATE/USIA

E. O. 11652: GDS

TAGS: PINS, SU

SUBJ: KHARTOUM ASSASSINATIONS - SUDANESE LEGAL PROCESS

1. SUMMARY: UNDER SUDANESE LEGAL SYSTEM, FINAL DECISION ON CARRYING OUT DEATH SENTENCE, WHETHER IMPOSED BY MILITARY OR CIVILIAN COURT, RESTS WITH PRESIDENT NIMAIRI. IF SENTENCE IS COMMUTED, PAROLE AND PARDON PROCEDURES ARE ADMINISTRATIVE DECISIONS OUTSIDE FORMAL LEGAL SYSTEM. END SUMMARY.

2. FOLLOWING IS EMBASSY UNDERSTANDING SUDANESE LEGAL SYSTEM AS IT WOULD APPLY IN CASE BSO TERRORISTS. INFO BASED ON CONVERSATIONS WITH NUMBER LEGAL AND OTHER KNOWLEDGABLE SOURCES INCLUDING ADVOCATE ABDEL AZIZ SHIDDO, FORMER CHIEF REGISTRAR JUDICIARY.

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PAGE 02 KHARTO 00602 201211 Z

EM INVESTIGATION. THREE MAN INVESTIGATING COMMITTEE, NOW WINDING UP WORK ON CASE, MUST ACCORDING SUDANESE LAW RECOMMEND EITHER CIVIL TRIAL OR COURT MARTIAL. GENERAL SPECULATION IS THAT RECOMMENDATION WILL BE FOR CIVIL TRIAL ALTHOUGH KEY GOS OFFICERS EARLIER SPECIFIED TO US PRIVATELY THAT TRIAL WILL BE MILITARY. CHARGES SO FAR ANNOUNCED IN PRESS ARE ALL CIVIL OFFENSES UNDER SUDAN PENAL CODE WHICH SUBJECT CIVIL COURTS. IF MILITARY TRIBUNAL TO BE USED, ADDITIONAL CHARGES IN CATEGORY OF CRIMES AGAINST STATE WOULD BE REQUIRED (WHICH WOULD NOT BE DIFFICULT).

4. MILITARY COURT. IF COURT MARTIAL IS RECOMMENDED, IT EXPECTED BEGIN SOON AND REACH EARLY CONCLUSION. COURT WILL BE COMPOSED MILITARY OFFICERS, PROBABLY MOST WITH LEGAL TRAINING. CIVILIAN MAGISTRATE WOULD ACT AS LEGAL ADVISOR. THERE IS NO HIGHER COURT OF MILITARY APPEAL. COURT'S JUDGMENT WOULD GO DIRECTLY TO NIMAIRI FOR REVIEW AND ACTION.

5. CIVIL COURT. IF CHOICE IS CIVIL COURT, JUDGE MUST BE APPOINTED TO CONDUCT PRE- TRIAL MAGISTERIAL INQUIRY. WHILE SUCH INVESTIGATION COULD TAKE SOME TIME, GENERAL SPECULATION IS THAT FACTS IN THIS CASE SO OPEN AND SHUT IT WOULD BE SWIFT. TRIAL WOULD THEN TAKE PLACE IN COURT COMPOSED SENIOR JUDGE AND TWO JUNIOR MAGISTRATES. WE HAVE HEARD SPECULATION TRIAL COULD BE OPEN IN SENSE IT COVERED BY TELEVISION, BUT OTHERWISE CLOSED TO AVOID PUBLIC DEMONSTRATIONS AND SECURITY PROBLEMS. " OUTSIDE" LEGAL ADVICE, SUCH AS REPORTEDLY OFFERED BY ARAB LEAGUE, COULD BE PROVIDED INDIRECTLY BUT FOREIGN LAWYERS COULD NOT SPEAK IN COURT.

6. SENTENCES AND REVIEW. GIVEN FACTS OF CASE, DEATH SENTENCE VIRTUALLY MANDATORY ALTHOUGH COURT CAN RECOMMEND CLEMENCY. MINIMUM AGE AT WHICH DEATH CAN BE IMPOSED IS 16. THERE IS SPECULATION THAT SOME OF BSO GROUP MAY BE UNDER 21 BUT NOT MUCH LESS THAN 19.

7. FINDING OF FIRST CIVIL COURT SUBJECT TO REVIEW BY THREE MAN " SUPREME COURT". IF DEATH SENTENCE HAS BEEN IMPOSED, HIGHER COURT MUST CONFIRM SUCH SENTENCE BEFORE IT IS FINAL. EVEN IF SUPREME COURT DOES CONFIRM SENTENCE OF DEATH, NIMAIRI RETAINS POWER, AS IN CASE OF MILITARY COURT, TO COMMUTE TO LESSER SENTENCE OR PARDON.

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PAGE 03 KHARTO 00602 201211 Z

IM IF ONE OR MORE DEATH SENTENCES WERE IMPOSED BUT THEN
COMMUTED TO LIFE OR OTHER LONG PRISON TERMS, PAROLE AND PARDON
PROCEDURES ARE NOT GOVERNED BY PENAL CODE. ON OTHER HAND,
THERE IS NO GUARANTEE OF CONSIDERATION FOR PAROLE AT ANY TIME.
THERE ARE NO MINIMUM PERIODS IMPRISONMENT REQUIRED BEFORE
ELIGIBILITY FOR PAROLE IS ESTABLISHED. IN NORMAL COURSE OF
EVENTS, PRISON AUTHORITIES PROPOSE INDIVIDUALS FOR PAROLE USUALLY
IN CONNECTION WITH NATIONAL CELEBRATIONS, E. G., INDEPENDENCE
DAY. THESE RECOMMENDATIONS HAVE TO BE APPROVED BY HIGHER
AUTHORITY. PRESIDENT IS, OF COURSE, FREE-- AND IN THIS CASE
PROBABLY LIKELY-- TO RESERVE SUCH DECISIONS TO HIMSELF AND
CONTRAINTS ON HIS ACTIONS IN THIS CASE WOULD BE POLITICAL,
BOTH DOMESTIC AND FOREIGN-- NOT LEGAL.
FRITTS

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